

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA : CASE NO. **1:09CR---16**
: :
: :
v. : **INFORMATION**
: :
: 18 U.S.C. § 1344
GARY L. VARNEY :
Weber, J.

The United States Attorney charges:

Count 1

Bank Fraud
18 U.S.C. § 1344

A. Background

1. At all times relevant to the offense charged herein, the defendant, **GARY L. VARNEY**, along with his wife, owned and operated two gravel supply companies known as Varney Dispatch, Inc. ("VDI") and PPV Inc. ("PPV"), both of which were located in Fairfield, Ohio within the Southern District of Ohio.
2. In August 2001, the defendant opened commercial checking accounts at Fifth Third Bank ("FTB") in Cincinnati, Ohio for VDI and PPV. The defendant also then opened what are known as controlled disbursement accounts for each company. These controlled disbursement accounts were zero balance accounts, that is, the deposits and withdrawals into these accounts were cleared each day to a zero balance against the related commercial checking accounts.

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3. The FTB commercial checking accounts for VDI and PPV were held in a Cincinnati, Ohio affiliate branch of FTB. The FTB controlled disbursement accounts were held in a Western Ohio affiliate branch of FTB. The location difference between the commercial checking accounts and the related controlled disbursement accounts for VDI and PPV created a one-day “float”, so that there was one-day lag prior to the clearing of checks deposited into the controlled disbursement accounts against the commercial checking accounts.

B. The Scheme to Defraud

4. Beginning in about August 2001, and continuing until about December 2005, the defendant, **GARY L. VARNEY**, devised and intended to devise a scheme and artifice to defraud, and to obtain moneys, funds, credits, or other property owned by or under the custody and control of Fifth Third Bank, Cincinnati, Ohio, a federally-insured financial institution, by means of false and fraudulent pretenses, representations, and promises.

5. It was part of the scheme to defraud that the defendant, **GARY L. VARNEY**, engaged in “internal check-kiting” among the accounts held by VDI and PPV, in which he would deposit into each commercial checking account 10 to 14 checks each day written against the commercial checking account of the other company (for example, depositing 10 checks written on the VDI account into the PPV account), in order to falsely inflate the balance of these accounts so that the checks drawn on the related controlled disbursement accounts would be cleared by FTB prior to the one-day float period.

6. The defendant, **GARY L. VARNEY**, then wrote checks against the controlled disbursement accounts of both VDI and PPV, knowing that he thereby obtained funds to which he was not entitled, and knowing that there were insufficient funds in the related

commercial checking accounts of VDI and PPV for such checks to clear, because he had falsely inflated the balances of the related commercial checking accounts through his check-kiting scheme.

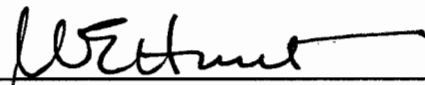
7. The loss resulting to FTB as a result of the defendant's scheme to defraud was approximately \$1,710,149.00.

C. Execution of the Scheme to Defraud

8. On or about December 9, 2005, in the Southern District of Ohio, in order to execute and attempt to execute the scheme to defraud FTB as alleged herein, the defendant, **GARY L. VARNEY**, deposited a check (check number 36855) from the commercial checking account of VDI (account number ****5353) in the amount of \$81,246.90, into the commercial checking account of PPV (account number ****5425).

All in violation of 18 U.S.C. § 1344.

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